

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

IN RE APPLICATION OF TERRA INVEST,
LLC UNDER 28 U.S.C. § 1782 TO
CONDUCT DISCOVERY FOR USE IN
FOREIGN PROCEEDINGS

Case No. _____

DECLARATION OF KHALID KUMYKOV

I, Khalid Kumykov, declare and state:

1. My name is Khalid Kumykov. I am a citizen of the Federation of Russia, and am over the age of majority under U.S. law.
2. I am the Chief Executive Officer of Terra Invest, LLC, a Russian limited liability company.

The Russian Real Estate Venture

3. Mir Mitino (the “Project”) is a mixed use real estate development located in the Mitino District of Moscow. Construction began in 2016, and today the Project comprises of 20 apartment buildings, a fitness center, a shopping mall, and seven car parks.
4. Terra Invest, the company for which I serve as CEO, and Russian limited liability company Fridom LLC (“Fridom”) each own 50% of the Project joint venture (the “Project JV”).
5. Based on my position as CEO of Terra Invest, I am aware that Russian nationals Mikhail Cherkasov and Andrei Dolin own and control Fridom. It is my understanding that Cherkasov owns 50.1% of Fridom and Dolin owns the remaining 49.9%.
6. The Project JV is comprised of and operates through two entities: a holding company, Rozhdestveno, JSC (“JSC-R”), and an operating company, Rozhdestveno, LLC (“LLC-R”).¹ JSC-R’s sole asset is LLC-R. Terra Invest and Fridom jointly own JSC-R.
7. JSC-R controls the Project through the JSC-R’s Board of Directors and two General Directors: Dmitrii Kharitonov and Cherkasov.

¹ LLC-R originally operated under the name NDV Stroy LLC (also referred to as LLC NDV – Stroi). The name was changed to LLC-R sometime in October 2015. Certain agreements relevant to the Project use the original entity name, NDV Stroy.

8. LLC-R acts as the real estate developer, construction manager, and sales and marketing agent for the Project. LLC-R receives the Project's sales and other revenue, and is party to all Project investment and debt financing agreements.

9. A September 15, 2015 agreement established that all income from the Project would be distributed *pro rata* to the JSC-R shareholders: Terra Invest and Fridom. Attached to my declaration as Exhibit A is a true and correct copy of the Indicative Terms, dated Sept. 15, 2015, as amended on June 20, 2016.

10. The Project is being financed using several lines of credit, all of which were refinanced in March 2019 through a loan to LLC-R from Sberbank of Russia, PJSC ("Sberbank").

11. The Project is being constructed on land that Poultry Farm Krasnogorskaia, JSC ("Poultry Farm") owns, subject to the terms of a September 30, 2015 investment contract between it and LLC-R.

12. Under the investment contract, Poultry Farm is entitled to receive a share of future residential and commercial real estate rental income from the Project.

13. Poultry Farm is owned and controlled by Capital Group Development, LLC ("Capital Group"). Capital Group is owned by three shareholders: Vladislav Doronin, Pavel Tio, and Eduard Berman, each of whom owns an equal 33.3% stake in the company. Attached to my declaration as Exhibit B is a true and correct copy of a Russian State register of legal entities regarding Capital Group Development LLC, dated June 21, 2021.

14. Capital Group's international real estate development and investment business appears to operate together with and through another company, OKO Group, LLC ("OKO Group"), which is a United States real estate company that operates principally in New York and Florida.

15. Vladislav Doronin, one of Capital Group's shareholders, is the owner of OKO Group. Attached to my declaration as Exhibit C is, on information and belief, a true and correct copy of a document depicting Capital Group Development, LLC and OKO Group, LLC's corporate structures and shared Russian real estate projects.

The Forged Power of Attorney

16. JSC-R held its annual general shareholders' meeting on July 12, 2019 without notifying Terra Invest of the meeting.

17. It is my understanding that JSC-R General Director Kharitonov represented Terra Invest's interests during that meeting, but he did so without Terra Invest's authority. He instead used a forged Power of Attorney document, which purported to authorize him to act on Terra Invest's behalf during the meeting.

18. Subsequent to the July 12, 2019 shareholders' meeting, I and others at Terra Invest received a copy of the forged Power of Attorney document through the Russian court system. Attached to my declaration as Exhibit D is a true and correct copy of the Forged Power of Attorney Document we received from the Russian court.

19. Terra Invest submitted the forged Power of Attorney for forensic analysis to the Russian Federal Centre of Forensic Science, which falls under the purview of the Ministry of Justice of the Russian Federation. Attached to my declaration as Exhibit E is a true and correct copy of the Expert Statement No. 1177/07-7-21, dated Apr. 1, 2021, in which an expert from the Russian Federal Centre of Forensic Science Under the Ministry of Justice of the Russian Federation examines the Terra Invest Power of Attorney document and concludes it is a forgery.

20. An expert forensic examiner at the Ministry of Justice of the Russian Federation independently confirmed that neither the signature nor the corporate seal on the Power of Attorney document were legitimate. *See id.* The examiner concluded that both the signature and Terra Invest corporate seal likely were copied-and-pasted from other documents. *See id.*

Fraudulent Uses of the Forged Power of Attorney Document

21. Terra Invest has discovered that Fridom co-owners, Cherkasov and Dolin, were behind the forged Power of Attorney document that General Director Kharitonov used during the July 12, 2019 shareholders' meeting.

22. Terra Invest has learned that Cherkasov and Dolin convinced JSC-R General Director Kharitonov to use the forged Power of Attorney at the 2019 shareholder's meeting. In exchange for his cooperation, Cherkasov and Dolin agreed to "employ" Kharitonov's 20-year-old son as "advisor to the General Director" of LLC-R. "Advisor to the General Director" is not a job that has any actual responsibilities, and Kharitonov's son was paid a large salary under this position.

23. The fraudulent Power of Attorney also was used during the 2019 shareholders' meeting to help Cherkasov and Dolin elect JSC-R's new board of directors. All of the new board members are Cherkasov and Dolin associates and allies, and Cherkasov and Dolin now have complete control over the Project JV entities (JSC-R and LLC-R) and therefore the Project.

24. Indeed, all votes during 2019 shareholders' meeting were cast as directed by Cherkasov and Dolin. One vote taken during that meeting involved authorizing JSC-R to execute several large deals with Sberbank.

25. Terra Invest has tried to resolve its shareholder dispute with Cherkasov and Dolin. Those attempts have been unsuccessful.

26. In June 2020, Terra Invest engaged Ernst & Young ("EY") to analyze the finances of JSC-R and LLC-R. Attached to my declaration as Exhibit F is a true and correct copy of excerpts from EY's *Fact-finding investigation report*, dated Dec. 25, 2020.

27. EY identified problematic transactions that occurred after Cherkasov and Dolin orchestrated their illegal takeover of JSC-R. *See id.* These transactions reveal that Cherkasov and Dolin were, through their control of JSC-R and use of the forged Power of Attorney, using Project assets and money to enrich themselves and benefit their family members. *See id.*

28. Some of the improper transactions included, for example:

- a. LLC-R signing lucrative contracts at inflated prices with companies controlled by Cherkasov, Dolin, and their family members;
- b. Covering Cherkasov's expenses at his personal residence and purchasing a Mercedes Benz Maybach S-Class for his personal use;
- c. Paying utilities and operating expenses for certain individuals without business justification;
- d. The below-market sale of a Project apartment to the daughter of Cherkasov and Dolin's attorney; and
- e. Making donations in Cherkasov's name to various charitable organizations.

See id.

Terra Invest's Attempts to Restore its Rights

29. Terra Invest has attempted to restore its rights and obtain compensation for the damages it has suffered as a result of Cherkasov and Dolin's use of the forged Power of Attorney.

30. Terra Invest has filed multiple lawsuits in Russia against JSC-R, LLC-R, and other parties. These lawsuits principally have been filed in the Arbitrazh Court of Moscow and almost all of them still are pending. Attached to my declaration as Exhibit G is a true and correct copy of a list identifying the foreign proceedings in which Terra Invest, LLC is a litigant or is otherwise involved related to the forged Power of Attorney document or the Project (or both and more).

31. Most notably, these actions include:

- a. A lawsuit against Kharitonov challenging the authenticity and uses of the forged Power of Attorney, filed on February 24, 2021;
- b. A lawsuit against JSC-R seeking to invalidate the election of new board members and the newly constituted boards' actions during the 2019 shareholders' meeting because such election and subsequent actions resulted from the fraudulent use of the forged Power of Attorney;
- c. The filing of a complaint with the Department of Interior of the Ministry of Internal Affairs of Russia for the city of Kolomna (Moscow region)

requesting a criminal investigation into the forged Power of Attorney and the unlawful ways in which it has been used; and

- d. The filing of a similar criminal complaint with the Ministry of Internal Affairs of Russia, Federal Security Service of Russia, Office of the General Prosecutor of Russia, Military Investigations Directorate of the Moscow branch of the Investigative Committee of Russia, and Department of Interior of the Ministry of Internal Affairs of Russia for the South-Eastern District of Moscow.

See id.

32. Terra Invest is actively preparing additional filings and for hearings scheduled in its various Russian cases and anticipates initiating new cases as well.

33. Terra Invest also has shared information with the investigative agencies referenced above and anticipates submitting additional information to these agencies as it becomes available.

The Insolvency Scheme

34. On information and belief, Cherkasov and Dolin, in coordination with Capital Group (under the leadership and direction of primary shareholders Doronin, Tio, and Berman), Sberbank and others, are orchestrating a scheme under which they have control over the Project JV's largest creditors with the intent to bankrupt the Project JV entities so they can convert the Project assets and profits from LLC-R to their new ownership group under the guise of a lawful process.

35. On information and belief, the scheme, to date, has operated as follows:

- a. On August 4, 2020, Capital Group-owned and controlled company Poultry Farm received a loan from Sberbank in the amount of 1.007 billion rubles—the exact amount of LLC-R's debt to Sberbank;
- b. On the same day, Poultry Farm loaned Viktoriia, JSC ("Viktoriia")—an entity jointly controlled by Capital Group, PIK Group, Cherkasov, and Dolin—the exact same amount (1.007 billion rubles);
- c. On the same day, Viktoriia purchased LLC-R's existing 1.007 billion rubles' debt from Sberbank, and thus became entitled to exercise creditor rights under the debt refinancing agreement between LLC-R and Sberbank;
- d. Shortly after that, Viktoriia terminated Cherkasov's personal guarantee under the debt refinancing agreement between LLC-R and Sberbank, paving the way for a bankruptcy proceeding in which Cherkasov's assets would not be implicated;

- e. Then, on October 13, 2020, Poultry Farm sued LLC-R in the Commercial Court of the City of Moscow (the “Poultry Farm Lawsuit”) to terminate the parties’ investment contract. Poultry Farm asserted a claim for 22 billion rubles in damages—an amount high enough that it unquestionably would render the Project JV entities insolvent; and
- f. On October 27, 2020, ostensibly because of the Poultry Farm Lawsuit, Viktoriia demanded that LLC-R repay its total outstanding debt within five business days of the demand. In other words, Viktoriia was demanding repayment of the 1.007 billion rubles’ loan that Viktoriia bought from Sberbank, presumably using the loan from Poultry Farm, which Poultry Farm itself originally loaned from Sberbank all on the same day.

36. Poultry Farm has proposed a settlement of the Poultry Farm Lawsuit with LLC-R, but Terra Invest is petitioning to keep the court from approving it.

37. If the settlement were approved, Cherkasov and Dolin could cause LLC-R to breach the terms of the Poultry Farm investment contract in violation of the settlement agreement, and it is likely that Cherkasov and Dolin will cause such a breach to occur.

38. If Cherkasov and Dolin are successful in causing the breach, Poultry Farm could enforce the settlement agreement and obtain a judgment of 22 billion rubles. That judgment would render the Project JV entities insolvent.

Relevant Information in the Possession or Control of U.S. Entities

39. Cherkasov, Dolin, Capital Group, and their co-conspirators have demonstrated a desire to take over the Project, and have taken appreciable steps to deprive Terra Invest of its interests in the Project JV entities and Project profits.

40. Capital Group is as an international commercial and residential real estate development and investment company. Capital Group also owns and controls Poultry Farm and controls Viktoriia, both of which participated in the insolvency scheme.

41. On information and belief, Capital Group often conducts its Russian business in tandem with and through a U.S. entity with common ownership, OKO Group. OKO Group’s founder and Chief Executive Officer, Doronin, owns one-third of and exercises substantial control over Capital Group.

42. On information and belief, OKO Group appears to serve as the U.S. branch of Capital Group, and thus OKO Group likely is in possession or control of documents related to Capital Group’s projects, investments, debt financing arrangements, and other real estate business dealings related to the Project. Attached to my declaration as Exhibit H is a true and correct copy of images from the Capital Group Development, LLC website. Attached to my declaration as Exhibit I is a true and correct copy of images from the OKO Group, LLC website.

43. On information and belief, Sberbank operates in the United States through its U.S. entity Sberbank CIB USA Inc. ("Sberbank USA"). Sberbank USA likely is in possession or control of transaction and loan documents, and other Project-related financial records.

I declare, under the penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on: June 23, 2021



Khalid Kumykov